IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.8549 OF 2004

Ms.Yasmin Rashid Shaikh Petitioner

versus

State of Maharashtra & others Respondents

D.V.Sutar, adv. for petitioner.
C.R.Sonawane, AGP for respondents.

CORAM : A.P.SHAH AND
S.C.DHARMADHIKARI, JJ.

DATE : 27th October 2004

PC :

1. Rule. Learned AGP waives service. By consent, petition is taken up for hearing.

2. Petitioner had secured admission in respondent no.4 college for Diploma in Education (D.Ed.) for the academic year 2003-2004. Petitioner had secured 44.67% marks in 12th standard examination conducted by the S.S.C. Board. The Maharashtra State Council for Educational Research and Training, Pune has framed admission rules and brochure for the academic year 2003-2004 in respect of D.Ed. course applicable to Government and aided D.Ed. colleges. The respondent no.4 college where the

petitioner secured admission to D.Ed. course for the academic year 2003-2004 runs two divisions of D.Ed. course. One in Marathi medium and other in English Medicum. The Marathi medium division of respondent no.4 college is aided. The English medium division of respondent no.4 college is unaided. Petitioner was admitted to D.Ed. course for the academic year 2003-2004 in English medium.

3. Respondent no.2 Council has framed rules for admission to D.Ed. course for the academic year 2003-2004. Under the rules it is provided that the candidate should pass 12th standard examination of respondent no.2 Council with minimum 45% of marks. It appears that at the time of admission, no objection was raised either by college authorities or by the Council, though petitioner's percentage was less than 45%. According to petitioner on rounding up the figure of 44.67% to 45%, the petitioner was clearly eligible for admission to the course. Reliance is placed on a decision of the Supreme Court in State of Punjab Vs/ Asha Mehta reported in (1997)11-SCC-410 where the Court held that the procedure followed by the Public Service Commission in rounding up the marks cannot be said to be illegal. It appears that objection to

petitioner's admission was raised for the first time in June 2004 i.e. nearly nine months after the petitioner took admission for the D.Ed. course. Petitioner has paid the fees and has completed studies in both the terms. Under these circumstances it will be unfair to the petitioner if he is not allowed to continue the course on the ground of non compliance of rules relating to minimum marks.

4. Learned counsel appearing for petitioner drew my attention to the decision of Supreme Court in Shrikrishna Vs. Kurukshtra University reported in AIR-1976-SC-376 where the Supreme Court has observed as follows :-

> "7. It appears from the averments made in the counter-affidavit that according to the procedure prevalent in the College the admission forms are forwarded by the Head of the Department in December proceding the year when the Examination is held. In the instant case the admission form of the appellant must have been forwarded in December 1971 whereas the examination was to take place in April/May 1972. It is obvious that during this period of four to five months it was the duty of the University authorities to scrutinise the form in order to find out whether it was in order. Equally it was the duty of the Head of the Department of Law before subkitting the form to the University to see that the form conmplied with all the requ8irements of law. If neither the Head of the Department nor the University authorities took care to

scrutinise the admission form, then the question of the appellant committing a fraud did not arise. It is well settled that where a person on whom fraud is committed is in a position to discover the truth by due diligence, fraud is not proved. It was neither a case of suggestio falsi, or suppressio veri. The appellant never wrote to the University authorities that he had attended the prescribed number of lectures. There was ample time and opportunity for the Univgersity authorities to have found out the defect. In these circumstances, therefore, if the University authorities acquiesced in the infirmities which the admission form contained and allowed the appellant to appear in Part I Examination in April 1972, then by force of the University Statute the University had no power to withdraw the candidature of the appellant. A somewhat similar situation arose in Premji Bhai Ganesh Bhai Kshatriya Vs. Vice Chancellor, Ravishankar University, Raipur, AIR-1967-Madh.Pra.-194 at P.197 where a Division Bench of the High Court of Madhya Ptradesh observed as follows:

"From the provisions of Ordinance Nos.19 and 48 it is clear that the scrutiny as to the requisite attendance of the candidates is required to be made before the admission cards are issued. Once the admission cards are issued permitting the candidates to take their examination, there is no provision in Ordinance No.19 or Ordinance No.48 which would enable the Vice-Chancellor to withdraw the permission. The discretion having been clearly exercised in favour of the petitioner by permitting him to appear at the examination, it was not open to the Vice-Chancellor to withdraw that permission subsequently and to withhold his result."

We find ourselves in complete agreement with the reasons given by the Madhya Pradesh High Court and the view of law taken by the learned Judges. In these circumstances, therefore, once the appellant was allowed to appear at the

> Examination in May, 1973, the respondent had no jurisdiction to cancel his candidature for that examination. This was not a case where on the undertaking given by a candidate for fulfilment of a specified condition a provisional admission was given by the University to appear at the examination which could be withdrawn at any moment on the non-fulfilment of the aforesaid condition. If this was the situation then the candidate himself would have contracted out of the statute which was for his benefit and the statute therefore would not have stood in the way of the University authorities in cancelling the candidature of the appellant."

5. In the present case it is nobody's case that the petitioner had practiced any fraud or misrepresentation at the college authorities. It appears that there was a bonafide belief on the part of college authorities to think that petitioner complied with the eligibility conditions. Under the circumstances the petitioner is clearly entitled for reliefs. Rule is made absolute in terms of prayer clauses (a) and (b).

(A.P.SHAH, J.)

(S.C.DHARMADHIKARI, J.)